

State of Iowa, Board of Regents / S.E.I.U. Local 199 (Health Care)

2004-2005

CEO 1085
SECTOR 3

IN THE MATTER OF THE IMPASSE BETWEEN

THE SERVICE EMPLOYEES
INTERNATIONAL UNION,
LOCAL 199,

Union,

and

THE BOARD OF REGENTS OF
THE STATE OF IOWA,

Employer.

IOWA PUBLIC EMPLOYMENT
RELATIONS BOARD
CASE NO. CEO 1085/3

DECISION AND AWARD
OF
ARBITRATOR

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IOWA PUBLIC EMPLOYMENT
RELATIONS BOARD

APPEARANCES

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For the Employer:

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On February 28, 2005, in Iowa City, Iowa, a hearing was held before Thomas P. Gallagher, Arbitrator, who was selected by the parties under the provisions of the Iowa Public Employment Relations Act (the "Act"), as amended, to resolve collective bargaining issues about which the parties are at impasse.

BACKGROUND

The Employer is the Board of Regents of the State of Iowa. It operates the University of Iowa (the "University") and the institutions associated with the University, including the University of Iowa Hospital and Clinics (the "Hospital"), located at Iowa City on the campus of the University.

The Hospital is the largest hospital and the only tertiary health-care facility in the State, and it is the teaching hospital for the University. During its fiscal year ending in 2004, its total staff was about 7,650, it had 774 in-patient beds and recorded 26,628 in-patient admissions, 176,188 patient days and 660,045 clinic visits. Its operating expense budget for that year was approximately \$629.4 million.

The Union is the collective bargaining representative of approximately 2,380 employees of the Employer who work at the Hospital in sixty-eight classifications. Most of these employees are Registered Nurses, including 1,491 in the classifications, Staff Nurse I and Staff Nurse II, eighty classified as Advanced Nurse Practitioners and seventy classified as Nurse Clinicians. In addition, the bargaining unit includes employees who work as Clinical Laboratory Scientists, Respiratory Therapists, Physical Therapists, Occupational Therapists, Radiology Professionals, Pharmacists and Social Workers.

The Union has represented these employees since 1998. Since then, the parties have successfully negotiated three labor agreements, each of two years' duration, the last of which is effective from July 1, 2003, through June 30, 2005.

The parties have succeeded in negotiating almost all of the provisions of a new two-year labor agreement that will be effective from July 1, 2005, through June 30, 2007. Hereafter, I may refer to the two years within the duration of this two-year term as the "first" year and "second" year of the new agreement or, as the parties sometimes have in their presentations to me, as "2005" and "2006." The parties have not been able to resolve their differences with respect to one impasse item, "Wages."

As permitted by the Act, the parties have agreed that my authority to resolve their impasse should be limited in the following manner. The impasse must be resolved by "final-offer" arbitration. Therefore, with respect to the single impasse item before me, I must select either the entire final position of the Employer or the entire final position of the Union, and I have no discretion either to award part of the position of one or the other of the parties or to include in my award any variation from the final position selected.

In deciding the issues in this proceeding, I have considered, among others, the factors specified in the Act as those that must be considered by a panel of arbitrators. Section 20.22, Subdivision 9, Code of Iowa. The text of that subdivision is set out below:

- a. Past collective bargaining contracts between the parties including the bargaining that led up to such contracts.
- b. Comparison of wages, hours and conditions of employment of the involved public employees with those of other public employees doing comparable work, giving consideration to factors peculiar to the area and the classifications involved.

- c. The interests and welfare of the public, the ability of the public employer to finance economic adjustments and the effect of such adjustments on the normal standard of services.
- d. The power of the public employer to levy taxes and appropriate funds for the conduct of its operations.

Article VII of the parties' 2003-2005 labor agreement and several appendices to the agreement establish the wage rates paid to bargaining unit employees. Below are set out the sections of Article VII that, with relevant appendices, describe a complex wage structure:

Section 1. Pay Plans. Minimum and maximum pay ranges by classification for the 2003-2004 contract year are as provided in Appendix B and for the 2004-2005 contract year are as provided in Appendix C.

Section 2. Pay Grades. Pay grades for classifications in the bargaining unit shall be as provided by classification in Appendix A.

Section 3. New Employees. New employees will be hired within the salary ranges by pay grade as provided in Appendix B for the 2003-2004 contract year and Appendix C for the 2004-2005 contract year. Employer may hire new employees above the minimum for the applicable salary grade.

Section 4. 2003-2004 Salaries (All Returning Employees).
[I omit this section.]

Section 5. 2004-2005 Salaries (All Returning Employees). Effective with the 2004-2005 appointment year (July 1, 2004), each returning full-time member of the bargaining unit who was employed on April 30, 2004 as a full-time member of the bargaining unit shall receive, in addition to existing base salary, a two percent (2%) increase to be added to the employee's base salary for the appointment year 2004-2005.

Section 6. Recruitment and Retention Adjustments. Each returning member of the bargaining unit who receives the salary increases provided in Sections 4 and 5 above, shall receive an additional Recruitment and Retention adjustment of two percent (2%) in the employee's base salary on July 1 of each year of this Agreement.

Section 7. Inpatient Nurse Salary Increase. [This section establishes an annual supplement of \$1,000 to be

paid to Staff Nurses who are assigned to "units that require twenty-four (24) hour staffing on site," referred to by the parties during the hearing as the "inpatient supplement."]

Section 8. Part-time Employees. [I omit this section.]

Section 9. Range Limitation. The implementation of salary increases as provided in Sections 4, 5, 6, 7 and 8 hereof shall not exceed the top of the salary ranges for each year as provided in Appendices B and C. With notice to the Union, the Employer may extend the established range for a specific classification as necessary to address critical needs. If an employee's salary would exceed the top of the established range, the employee's base salary shall be set at the top of the range, and any increase exceeding the top of the range shall be paid to the employee as a one-time lump sum and not added to the employee's base salary. Any such lump sum payment shall be due and payable to the employee on December 1st of each contract year covered by this agreement.

Section 10. Market Adjustments. Specific market adjustments shall be made during the term of this agreement as provided in Appendix D of this agreement.

Section 11. Employer Discretion. Nothing herein shall preclude the Employer from granting salary increases related to performance, equity payments, or market conditions above the requirements of this Article.

As the text of these sections provides, the minimum and maximum salaries for bargaining unit classifications are set by the Appendices referred to. Other provisions of the parties' 2003-2005 labor agreement establish pay supplements and differentials for services such as working extra time, being on "standby/on-call," working on weekend shifts and working on a night shift.

During their presentations at the hearing before me, the parties referred to proposals to adjust base salary as described in Section 5 of Article VII as "Across-the-board" adjustments, and they referred to proposals to adjust base salary as described in Section 6 of Article VII as "Retention" adjustments; I adopt those terms in describing the parties' positions.

I note that, by force of Sections 6 and 9 of Article VII of the 2003-2005 labor agreement, the Retention adjustment for the two years of that agreement did not operate to increase the base salary of an employee who was at the top of the range set in the appendices for his or her pay grade. Instead, such an employee received the Retention adjustment for both years of the 2003-2005 contract term as a "bonus" that was not carried forward to future years as an increase in base salary.

The parties have agreed that, even though each party proposes different percentages for the Retention adjustment, that adjustment will, for the two years of the new contract term, be added to the base salary even for employees at the top of the salary range. My summary of the parties' positions, given below, should be read to include this paragraph. The parties' final positions have been presented to each other and to me in two forms -- in summaries, which I paraphrase below, and in contract text. In this Decision and Award, I do not restate the contract text they have included in their statements of final position, and, instead, I describe their positions using a summary form, consistent with the summaries they have used in their presentations. Nevertheless, I intend that the award in this proceeding be read as an adoption of the contract text proposed by the prevailing party.

During bargaining, the parties agreed with respect to increases in the Employer's contribution to the cost of insurance, and they agreed to increases in several of the supplements and differentials established by the 2003-2005 labor agreement.

The Union's Position.

The Union proposes that the new labor agreement between the parties provide 1) that, during the first year of the new contract term, each bargaining unit employee receive an Across-the-board increase of 5% of the base salary he or she received during the last year of the 2003-2005 contract term, and 2) that, during the second year of the new contract term, each employee receive an Across-the-board increase of an additional 5% of the base salary he or she received during the first year of the new contract term.

The Union also proposes Retention adjustments that would vary according to the "years of experience" of each employee working in a classification requiring that he or she be a Registered Nurse and that would vary according to "seniority" of each employee working in a classification not requiring that he or she be a Registered Nurse.

For the first year of the new contract term, the Union proposes that employees working in Registered Nurse classifications receive a Retention adjustment increase of 1.5% of base salary if they have from zero to five years of experience (including nursing experience from previous employment), a Retention adjustment increase of 2% if they have from six to fifteen years of experience, a Retention adjustment increase of 2.5% if they have from sixteen to nineteen years of experience and a Retention adjustment increase of 3% if they have twenty or more years of experience. For the second year of the contract term, the Union proposes that, in addition to the Retention adjustment increase for the first year of the contract term,

employees working in Registered Nurse classifications receive an additional Retention adjustment increase of 1.5% of base salary if they have from zero to five years of experience, a Retention adjustment increase of 2% if they have from six to fifteen years of experience, a Retention adjustment increase of 2.5% if they have from sixteen to nineteen years of experience and a Retention adjustment increase of 3% if they have twenty or more years of experience.

For the first year of the new contract term, the Union proposes that employees working in non-Registered Nurse classifications receive a Retention adjustment increase of 1.5% of base salary if they have from zero to five years of seniority (a term that does not include service in previous employment), a Retention adjustment increase of 2% if they have from six to fifteen years of seniority, a Retention adjustment increase of 2.5% if they have from sixteen to twenty-five years of seniority and a Retention adjustment increase of 3% if they have twenty-six or more years of seniority. For the second year of the contract term, the Union proposes that, in addition to the Retention adjustment increase for the first year of the contract term, employees working in non-Registered Nurse classifications receive an additional Retention adjustment increase of 1.5% of base salary if they have from zero to five years of seniority, a Retention adjustment increase of 2% if they have from six to fifteen years of seniority, a Retention adjustment increase of 2.5% if they have from sixteen to twenty-five years of seniority and a Retention adjustment increase of 3% if they have twenty-six or more years of seniority.

The Employer's Position.

The Employer proposes that the new labor agreement provide 1) that, during the first year of the new contract term, bargaining unit employees receive an Across-the-board increase of 3% of the base salary each received during the last year of the 2003-2005 contract term, and 2) that, during the second year of the new contract term, bargaining unit employees receive an Across-the-board increase of an additional 3% of the base salary each received during the first year of the new contract term.

The Employer also proposes 1) that, during the first year of the new contract term, all employees receive a Retention adjustment increase of 1% of the base salary they received during the last year of the 2003-2005 contract term and 2) that, during the second year of the new contract term, all employees receive a Retention adjustment increase of an additional 1% of the base salary they received during the first year of the new contract term.

The Employer also proposes that employees in particular classifications receive additional increases in base salary (hereafter, referred to as "Class-specific adjustments"). All bargaining unit classifications would receive a Class-specific adjustment of at least an additional 0.35% of base salary for each year of the new contract term. Staff Nurses would receive a Class-specific adjustment of 0.5% of base salary for each year of the new contract term, instead of the minimum Class-specific adjustment of 0.35% just described. Physical Therapists and Occupational Therapists would receive a Class-specific

adjustment of 1.5% of base salary during the first year of the new contract term, and, during the second year of the new contract term, they would receive the minimum Class-specific adjustment of 0.35% of base salary. Embryologists and Sonographers would receive a Class-specific adjustment of 2% of base salary for each year of the new contract term, instead of the minimum Class-specific adjustment of 0.35%. Employees who are Social Workers, in various classifications, would receive the minimum Class-specific adjustment of 0.35% of base salary for the first year of the new contract term, and they would receive a Class-specific adjustment of 1% of base salary for the second year of the new contract term.

Decision.

In support of its position, the Union argues that the increases it seeks are justified because bargaining unit salaries are low when compared to salaries paid to employees in similar classifications by other relevant employers. In addition, the Union argues that the Employer has the ability to pay the higher increases incorporated in the Union's position.

The Employer rejects the Union's argument based on comparison of salaries paid by others, urging that the employers included in the Union's comparison group are not appropriate for comparison. The Employer also argues that an award of the Union's position would be expensive and limit its ability to function as a dynamic, growing institution.

Cost. Below is set out the Employer's comparison of the increase in the cost of funding bargaining unit salaries and

benefits, assuming 1) that the award in this proceeding adopts its position or 2) that it adopts the position of the Union:

THE EMPLOYER'S POSITION:

	<u>2005</u>	<u>2006</u>
Total Increased Expenditure in Base Salaries:	4.46%	4.46%
Total Pay Adjustments (Settled and Not Here at Issue):	1.20%	0.58%
Total of Base Increases and Settled Adjustments:	5.21%	4.60%
Total Increase With Settled Increases in Benefits:	5.83%	5.30%
Total Dollar Increase in Cost (Salaries and Benefits):	\$8,745,453	\$8,419,488
Total Increases For Two Years:	\$17,164,941	

THE UNION'S POSITION:

	<u>2005</u>	<u>2006</u>
Total Increased Expenditure in Base Salaries:	7.18%	7.23%
Total Pay Adjustments (Settled and Not Here at Issue):	1.33%	0.70%
Total of Base Increases and Settled Adjustments:	7.82%	7.24%
Total Increase With Settled Increases in Benefits:	8.18%	7.65%
Total Dollar Increase in Cost (Salaries and Benefits):	\$12,278,051	\$12,423,451
Total Increases For Two Years:	\$24,701,502	

The Union's estimate of the increased cost of its position and that of the Employer is substantially the same as that of the Employer -- insofar as calculations relate to the parties' final positions here at issue. The Union's calculation, however, of the increased cost of salary and benefit adjustments that have been settled are lower than the Employer's calculation of those costs.

The Employer points out that the total increase in cost for the second year of the new contract's term will include, in addition, substantially all of the increase in cost for the first year of the contract's term, thus making its total dollar expenditure to fund both years of the new contract term higher than the total of the year-to-year increase in each year.

Wage Comparisons. The parties disagree about the attributes of other hospitals that are relevant to a proper market comparison. The Union argues that the institution operated by the Employer is unique in the State of Iowa -- that it is the largest in annual revenue and in number of employees, number of beds and number of patients served, that it is the primary teaching hospital in the state, that it is able to treat patients at a higher level of acuity than other Iowa hospitals and that the skill and expertise of its employees are higher than at any other Iowa hospital.

The Union argues that, accordingly, the most relevant hospitals for a market comparison to determine bargaining unit wages are those of similar size and complexity, with similar skill profiles. The Union proposes a comparison group of eleven hospitals associated with universities -- eight at Big Ten Universities (the University of Indiana, the University of Minnesota, the University of Michigan, Michigan State University, the University of Wisconsin, the University of Illinois, Ohio State University and Penn State University) plus the University of Arizona, the University of North Carolina and the University of California. All of these hospitals are operated as non-profit

entities, some are private and some are government supported in part.

The Union presented evidence showing the average hourly minimum and maximum wage rates paid in 2004 to Nurse classifications at these eleven hospitals and comparing those rates to the rates paid by the Employer. For this eleven-hospital comparison group, the average minimum hourly rate was \$20.93, and the average maximum hourly rate was \$32.48. The minimum and maximum Staff II Nurse wage rates paid by the Employer were \$20.43 and \$25.81, though these amounts did not include the annual \$1,000 in-patient supplement received by a little more than half of bargaining unit Nurses.

The Employer argues that the most relevant hospitals for a market comparison are hospitals within the State of Iowa and not those in other states. The Employer urges that, because bargaining unit employees reside in Iowa, with a relatively low cost of living compared to costs in the larger communities in which many of the hospitals in the Union's group are located, the wage rates paid in Iowa should reflect the reduced costs incurred by bargaining unit employees. The Employer also argues that Iowa hospitals should be used for a market comparison because Iowa is primarily the labor market it draws from when hiring new bargaining unit personnel. About 80% of the Employer's newly hired employees are Iowa residents.

Accordingly, the Employer proposes a comparison group of hospitals described as seventeen to twenty large Iowa hospitals, i.e., those having annual revenue of \$45 million or more, as

surveyed by the Iowa Hospital Association ("IHA"). The Employer presented evidence showing that the minimum and maximum wage rates it pays to Staff Nurses are about the same as or slightly above the average wage rate paid by this IHA comparison group.

The Employer also makes the following arguments about its finances. It has little control of the level of its revenues. The state provides only 7% of revenues, to fund programs for the indigent, the dollar amount of which is projected not to increase in 2006 and 2007. Medicare and Medicaid -- the source of about 43% of revenues -- are fixed by government. Insurance reimbursement rates are also inflexible. Iowa has ranked 48th to 50th among the states in the Medicare payment rate per enrollee.

Though the Employer had a healthy operating margin in past years, 5.8% in 1999, the margin has declined since then to only about 1.4% in 2003 and 1.6% in 2004. It is the goal of the Employer to raise the operating margin to about 3% in 2005 and in the next several years. It needs the higher margin to maintain its good credit rating with bond rating agencies, to finance capital expenditures and to build reserves for the expansion of the services it offers, necessary to growth. An award of the Union's position in this proceeding would prevent this improvement in operating margin. Though the Board of Regents has authorized a 9.5% increase in rates charged for 2005, the net actual revenue increase that will be generated from that rate increase is estimated to be only about 1.48%.

The Employer has taken steps to reduce expenditures, controlling the cost of drugs and supplies and reducing the

length of stay for acute care patients. It has also substantially reduced the use of expensive "agency" Nurses -- those hired on a temporary basis to fill in when regularly staffed Nurses are not available -- by a substantial improvement in the rate of staff turnover.

The Employer also argues that the pattern of wage settlements across the state is substantially below what the Union seeks in this proceeding and that an award of the Union's proposal would provide an increase disproportionately above what the Employer has agreed to pay its other employees in settlement with their representatives. In addition, the Employer argues that the Union's proposed wage increase would far exceed the average 3.3% percentage increases provided for 2004 by other Iowa hospitals, and the 3.4% increase by hospitals in neighboring states and in the nation.

The Union makes the following additional arguments in support of its position. Its proposal is structured to improve the relatively lower pay of long-term employees, more than 20% below the pay of similar employees in its comparison group. The IHA group used by the Employer is ill-defined, and the definition of a "large hospital" it uses -- one with annual revenues above \$45 million -- indicates little relevance for proper comparison to the Employer's hospital, which had annual revenues of \$630 million in 2004.

The Union argues that the Employer has been inconsistent in denying, in this proceeding, that the larger university hospitals of the kind used by the Union for comparison are

appropriate for determining bargaining unit wages, while in recent years, the Employer has used the universities associated with those hospitals in its own wage survey to make comparison of wages for other employees of the University of Iowa. The Union also notes a similar inconsistency appearing in the testimony of witnesses for the Employer, who referred to the hospitals at midwestern universities, as a "peer group" when making revenue comparisons, but who rejected the idea that those institutions are appropriate for the wage comparisons proposed by the Union. In addition, the Union notes that the information about IHA wage rates provided by the Employer was given without the inclusion of detailed supporting data.

Award.

For the following reasons, I award the final position of the Employer. In most interest arbitration proceedings, each side uses a comparison group comprised of employers that pay wages or have benefits at a level favoring its position if compared. Each side argues that the employers in its group have similar attributes to those of the employer in the case at hand, and usually, the information from the comparison groups of each side is relevant in some way.

Thus, in the present case, the Union makes a valid argument that the large size and the skill level of the hospitals in its group are relevant attributes because the Hospital has similar attributes. The Employer's argument about the relevance of its comparison group is also valid. The Hospital, though large and providing a complex level of service,

is located in a state where hospital reimbursements are lower, relevant wages are lower and living costs are lower -- thus making location of the employers selected for comparison relevant as well as their size and skill level. My review of all of the comparison evidence indicates that bargaining unit wages are relatively low, if the primary standard for setting wages is institutional size and skill level, but that the need to correct the deficiency is lessened by the attributes of location that I have referred to above -- relatively low hospital reimbursements, relevant wages and living costs.

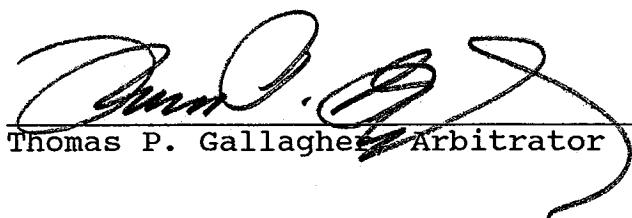
The Union has argued that, even though the difference between the cost of the parties' positions appears to be substantial if quantified without regard to the Employer's total revenues, the difference is not great as a percentage of the Employer's revenues.

My calculations show that, for the first year of the contract term, the parties' final positions differ by about \$3.6 million, which is equal 1) to about 0.53% of the \$679 million dollar projected revenue base for 2005 and 2) to about 17.5% of the projected operating margin goal of \$20.6 million. In 2006, if revenues increase by a similar 7.77% to about \$732 million, the projected operating margin goal of 3% would yield about \$21.96 million. The cost difference in the parties' positions for 2006 will equal about \$7.6 million (\$3.6 million from 2005, which will continue in 2006, plus \$4.0 million in 2006) -- about 1%, as a percentage of revenue, but a substantial 34.6%, as a percentage of the projected operating margin goal.

An award of the Employer's position will increase total wages by 5.21% in 2005 and by an additional 4.68% in 2006 -- percentages that are substantially above the recent average wage increases provided by other Iowa hospitals and other midwestern hospitals and that should make some progress toward the Union's goal of raising wages toward the levels paid by the university-associated hospitals in its comparison group. An award of the Employer's position will also preserve the financial stability of the Employer, enabling it to make capital expenditures and build reserves necessary to growth in services, whereas it appears that an award of the Union's position would adversely affect that stability.

Though I award the Employer's position for the reasons stated, I agree with the Union that bargaining unit wages are unduly compressed and that some effort to correct that compression is justified. The final-offer limitations on my authority in this proceeding require that I award the entire position of one party or the other, without amendment. If I had authority to do so, I would provide part of the compression relief the Union seeks, and I recommend that the parties make an effort to do so when bargaining for their next labor agreement.

March 11, 2005


Thomas P. Gallagher, Arbitrator

CERTIFICATE OF SERVICE

I certify that on the 11th day of March, 2005, I served the foregoing Decision and Award of Arbitrator upon each of the parties to this matter by mailing a copy to them at their respective addresses as shown below:

For the Union:

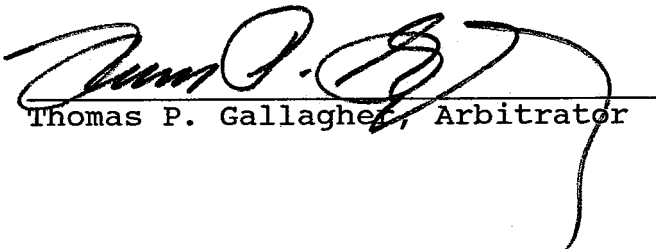
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For the Employer:

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I further certify that on the 11th day of March, 2005, I will submit this Decision and Award for filing by mailing it to the Iowa Public Employment Relations Board, 510 East Twelfth Street, Suite 1B, Des Moines, IA 50319.

March 11, 2005


Thomas P. Gallagher, Arbitrator